

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORKFILED
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U.S. DISTRICT COURT E.D.N.Y.

Site Pro-1, Inc., Plaintiff v. Better Metal, LLC, Defendant	Civil Action No. <u>LONG ISLAND OFFICE</u> COMPLAINT CV-06 6508 GLASSER, J. REYES, JR, M.
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For its Complaint against defendant, plaintiff Site Pro-1, Inc., by its attorneys,

The Farrell Law Firm, alleges as follows:

PARTIES

1. Plaintiff Site Pro-1, Inc. ("SitePro1") is a corporation of the State of New York having offices at 15 Oser Avenue, Hauppauge, New York 11788.
2. On information and belief, defendant Better Metal, LLC ("Better Metal") is a corporate entity having offices at 126 Wheeler Street, La Vergne, TN 37086.

JURISDICTION AND VENUE

3. This is a civil action for trademark infringement under the Trademark Laws of the United States, 15 U.S.C. §1114(1), *et seq.*
4. Jurisdiction is conferred upon this Court under 15 U.S.C. §1121 and 28 U.S.C. §1338(a).
This Court has pendant jurisdiction over all related claims herein in accordance with 28 U.S.C. §1338(b).
5. Venue is proper under 28 U.S.C. §1391.

STATEMENT OF FACTS

6. Operating under its SITE PRO 1[®] mark, SitePro1 has manufactured and sold numerous products, including metal components used in construction of exterior wireless communications transmitter and receiver facilities, i.e. wireless telecommunications towers, namely cable wire, cable mounts, clamps, supports, antenna supports and metal connectors, as well as for other purposes.
7. Long prior to the acts of Better Metal that are complained of herein, SitePro1 has sold hundreds of thousands of dollars of metal components for constructing exterior wireless communications transmitter and receiver facilities under its SITE PRO 1[®] mark.
8. By virtue of extensive use, advertising and promotion, and prior to the acts of Better Metal that are complained of herein, SitePro1's SITE PRO 1[®] mark became famous in the wireless telecommunications tower construction industry, and has acquired strong and valuable secondary meaning. SitePro1 owns all rights in its SITE PRO 1[®] mark.
9. SitePro1 sells its products by advertising over the Internet at www.sitepro1.com.
10. SitePro1 has registered its SITE PRO 1[®] trademark on the principal register of the U.S. Patent and Trademark Office, which issued Registration No. 3,111,463 (the "463" registration) to SitePro1. The status and description of the '463 registration is attached hereto as Exhibit A.
11. Better Metal is a direct competitor of SitePro1.
12. At Internet site www.bettermetal.com, Better Metal advertises itself as being a stocking manufacturer of products for the wireless industry, and sells products that include antenna mounts utilized in the construction of wireless telecommunications towers.

13. Like SitePro1, Better Metal sells via the Internet antenna mounts and other products for use in construction of wireless telecommunications towers.
14. Upon information and belief, for the purpose of improperly directing Internet users to its site, Better Metal placed SitePro1's SITE PRO 1[®] trademark in the metadata and/or meta tags of its www.bettermetal.com and/or improperly included SitePro1's SITE PRO 1[®] trademark in a search engine algorithm utilized by the Yahoo! search engine.
15. When an Internet user performs a search for "Site Pro 1", the Yahoo! search engine retrieves a listing for the www.bettermetal.com site and posts that listing before SitePro1's www.sitepro1.com website. See Exhibit B hereto.
16. By utilizing the identical designation of SitePro1's SITE PRO 1[®] mark, Better Metal is directing SitePro1 customers and potential SitePro1 customers to www.bettermetal.com, which offers for sale products that compete with SitePro1's products.
17. SitePro1 has been and continues to be damaged by Better Metal's actions.
18. On information and belief, Better Metal will continue the acts that are complained of herein unless enjoined by this Court.

COUNT I : FEDERAL TRADEMARK INFRINGEMENT

19. SitePro1 realleges paragraphs 1 through 18 above.
20. Better Metal's above-described acts constitute trademark infringement of SitePro1's federally registered SITE PRO 1[®] mark in violation of the United States Trademark Act, 15 U.S.C. § 1114(1).

COUNT II : FEDERAL UNFAIR COMPETITION

21. SitePro1 realleges paragraphs 1 through 20 above.

22. Better Metal's above-described wrongful acts have caused unjust enrichment of Better Metal.

23. Better Metal's above-described wrongful acts constitute misleading use of a word, term, name, trade dress, symbol or device, or a combination thereof, in violation of the United States Trademark Act, 15 U.S.C. § 1125(a).

COUNT III : COMMON LAW UNFAIR COMPETITION

24. SitePro1 realleges paragraphs 1 through 23 above.

25. Better Metal's above-described wrongful acts constitute unfair competition in violation of the common law of the United States, including the common law of the State of New York.

COUNT IV : FEDERAL TRADEMARK DILUTION

26. SitePro1 realleges paragraphs 1 through 25 above.

27. Prior to the above-described acts of Better Metal, the SITE PRO 1[®] trademark became famous within the meaning of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(c).

28. Better Metal's above-described acts caused and continue to cause actual dilution of the distinctive quality of SitePro1's SITE PRO 1[®] trademark, and have lessened the capacity of the trademark for distinguishing SitePro1's goods.

WHEREFORE, plaintiff Site Pro-1, Inc. requests that relief in its favor be afforded as follows:

1. That an injunction be entered preliminarily and permanently prohibiting defendant, as well as its subsidiaries, affiliates, divisions, officers, employees, agents, servants, attorneys, representatives, successors, assigns and those in privity or acting in concert with defendant from:

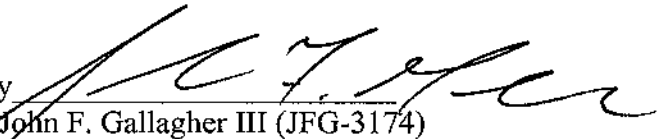
- a. using the SITE PRO 1[®] trademark, or any name or mark which includes that mark, or is otherwise likely to cause confusion, mistake, deception, or in any way dilute the distinctiveness of SitePro1's trademark; and
 - b. doing any other act or thing likely to confuse, mislead or deceive others into believing that defendant, or any product or service that emanates therefrom, is affiliated or connected with or is sponsored or approved by SitePro1;
 - c. unfairly competing with SitePro1; and
 - d. injuring SitePro1's business reputation and the goodwill associated with the SITE PRO 1[®] trademark; and
2. That an Order be entered awarding monetary relief in an amount to be fixed by the Court, including:
- a. all profits received by defendant from sales and revenues of any kind made as a result of its acts of trademark infringement, unfair competition and dilution, with such amount trebled due to the willfulness of defendant's actions;
 - b. punitive damages;
 - c. the cost of advertising and expenditures necessary to dispel any public confusion caused by defendant's unlawful acts as complained of herein; and
 - d. an award of plaintiff the costs of this action, including reasonable attorneys' fees, experts fees and interest, pursuant to 15 U.S.C. § 1117;

3. That an Order be entered requiring defendant to file with the Court and serve on SitePro1 within thirty (30) days after issuance of an injunction, a report provided under oath setting forth in detail the manner in which defendant has complied with the injunction; and
4. Further relief that this Court may deem just.

Dated: December 5, 2006
Uniondale, New York

Respectfully submitted,

THE FARRELL LAW FIRM

By 
John F. Gallagher III (JFG-3174)
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Attorneys for Plaintiff
SITE PRO-1, INC.

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Serial Number: 78560970 Assignment Information

Registration Number: 3111463

Mark

SITE PRO 1

(words only): SITE PRO 1

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2006-07-04

Filing Date: 2005-02-04

Transformed into a National Application: No

Registration Date: 2006-07-04

Register: Principal

Law Office Assigned: LAW OFFICE 117

**If you are the applicant or applicant's attorney and have questions about this file,
please contact the Trademark Assistance Center at
TrademarkAssistanceCenter@uspto.gov**

Current Location: 650 -Publication And Issue Section

Date In Location: 2006-07-04

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Site Pro 1, Inc.

Address:

Exhibit A

Site Pro 1, Inc.
15 Oser Avenue
Hauppauge, NY 11788
United States
Legal Entity Type: Corporation
State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 006

Class Status: Active

Metal components used in constructing exterior wireless communications transmitter and receiver facilities, namely cable wire, cable mounts, clamps, supports, antenna supports, and metal connectors

Basis: 1(a)

First Use Date: 2003-12-00

First Use in Commerce Date: 2003-12-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2006-07-04 - Registered - Principal Register

2006-04-11 - Published for opposition

2006-03-22 - Notice of publication

2006-02-21 - Law Office Publication Review Completed

2006-02-17 - Assigned To LIE

2006-02-16 - Examiner's amendment mailed

2006-02-16 - Approved for Pub - Principal Register (Initial exam)

2006-02-16 - Examiner's Amendment Entered
2006-02-16 - Examiner's Amendment Entered
2006-02-16 - Examiners Amendment -Written
2006-02-07 - Teas/Email Correspondence Entered
2006-02-02 - Communication received from applicant
2006-02-02 - TEAS Response to Office Action Received
2005-09-08 - Non-final action mailed
2005-09-07 - Non-Final Action Written
2005-09-01 - Assigned To Examiner
2005-02-14 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Ira C. Edell

Correspondent

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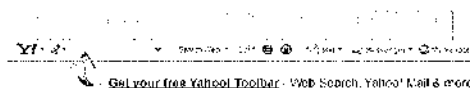
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Exhibit B